



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI**

Reserved on : 17.09.2020

Pronounced on : 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P. (MD)Nos.5569 and 6221 of 2020

and

Crl.M.P. (MD)Nos.3072 and 3383 of 2020

Crl.O.P. (MD)No. 5569 of 2020

1.Sathik Batcha,
S/o.Noor Mohammed

2.S.M.Noor Mohammed,
S/o.Mohammed Meerangani ... Petitioners / Accused 1 & 2

versus

1.State represented by
Inspector of Police,
District Crime Branch,
Ramanathapuram District.
(Crime No.11 of 2020) ...1st respondent /complainant

2.Dowlath Nooriah @ Dowlath Nisha,
W/o.Ajmal Khan ... 2nd respondent /
de facto complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the records relating to the proceedings in Crime No.11 of 2020 dated 12.03.2020 on the file of the 1st respondent police and quash the same.

For Petitioners	:	Mr.V.Karthirvelu, Senior Counsel for M/s.T.Antony Arul Raj
For Respondent No.1	:	Mr.S.Chandrasekar, Additional Public Prosecutor
For Respondent No.2	:	Mr.R.Anand

Crl.O.P. (MD)No.6221 of 2020

Thowlath Nooriya @ Thowlath Nisha,

W/o.Ajmal Khan ...Petitioner / *de facto* complainant

versus

1.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.



2.The Inspector of Police,
District Crime Branch,
Ramanathapuram.

(Crime No.11 of 2020) ...Respondents / Respondents

WEB COPY

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to direct the Inspector of Police, District Crime Branch, Ramanathapuram District to complete the investigation in Crime No.11 of 2020 pending on his file and to file a final report therefrom within the time stipulation as prescribed by this Court.

For Petitioner : Mr.R.Anand
For Respondents : Mr.S.Chandrasekar,
Additional Public Prosecutor

C O M M O N O R D E R

Since the dispute in respect to two petitions are one and the same, a common order is being passed to dispose of these petitions.

2. Crl.O.P.(MD)No. 5569 of 2020 has been filed seeking the relief to call for the records relating to the impugned First Information Report, registered in Crime No.11 of 2020, dated 12.03.2020, on the file of the first respondent police and quash the same as illegal.

3. Crl.O.P.(MD)No.6221 of 2020 has been filed seeking a direction to direct the respondents 1 and 2 to complete the investigation and file a Final Report in Crime No.11 of 2020, within a time as stipulated by this Court.

4. Heard Mr.V.Karthirvelu, learned Senior Counsel representing M/s.T.Antony Arul Raj, for the petitioners, Mr.S.Chandrasekar, learned Additional Public Prosecutor for the first respondent and Mr.R.Anand, learned counsel for the second respondent, in Crl.O.P.(MD)No. 5569 of 2020. Heard Mr.R.Anand, learned counsel for the petitioner and Mr.S.Chandrasekar, learned Additional Public Prosecutor for the respondents, in Crl.O.P.(MD)No. 6221 of 2020.

5. The petitioners in Crl.O.P.(MD)No. 5569 of 2020 are arrayed as accused nos.1 and 2 in the above referred F.I.R. and the said case has been registered against the petitioners alleging that they had committed offences under Sections 465, 468, 471, 420 and 120(B) IPC.

6. Now, on going through the averments found in the F.I.R., it was stated that the second respondent is having 3 brothers and 2 sisters born on 07.11.1982, in respect to the family property, partition



was effected in between the family members of the second respondent, in which, the property comprised in Survey Nos.434/1 and 434/2 of Sakkarakkottai Village, Ramanathapuram District, was allotted in favour of the second respondent and also in favour of her family members. After two years from the date of partition, the second respondent got married and started their matrimonial life in Chennai.

7. In the meantime, in the year of 2017, the mother of the second respondent, namely, Kuraisha Beevi was died. Only thereafter, the petitioners attempted to verify the details of the immovable property. On verification, it was found out that the property comprised in Survey No.434/1 was sold away vide Document No.1892/1990. According to the second respondent, the said document was fabricated one and the said fabrication was done by the second petitioner.

8. Further, it was alleged that the petitioners herein impersonated the complainant and executed a Power of Attorney Deed in favour of the first petitioner on 21.09.1990 vide Document No.124/1990. Subsequently, on the strength of the same, on 10.10.1990, both the petitioners herein sold the said property to the third party vide Document No.1987/1990.

9. In respect to the said allegations, the learned counsel for the petitioners would submit that the averments set out in the First Information Report does not make out any offence as mentioned above by the *de facto* complainant. Further, she lodged a complaint after 30 years from the date of occurrence. He would further submit that the first petitioner is the son of the second petitioner and the *de facto* complainant/2nd respondent is none other than the niece of the second petitioner herein. The *de facto* complainant and her family members had jointly executed a registered Sale Deed on 21.09.1990 vide Document No.1892/1990 in respect to Survey No.434/1, Sakkarakkottai Village, Ramanathapuram District, in favour of one Sara Habiba Wahaira. More than that, a Civil Suit in O.S.No.109 of 2010 is pending on the file of the District Musif, Ramanathapuram, in which, the second respondent being the 7th defendant has filed a written statement, wherein in paragraph nos.5 and 6 she admitted the execution of the document dated 21.09.1990 and therefore, it cannot be said that the document dated 21.09.1990 executed by the family members of the second respondent is a fabricated one.

10. In respect to Survey No.434/2, learned counsel appearing for the petitioners would contend that the alleged General Power of Attorney stands in the name of the petitioners in respect to S.F.No.434/2 was executed by all the family members including the *de facto* complainant vide registered Power Deed dated 21.09.1990 in favour of the first petitioner. Only on the strength of the same, the said document was executed by the petitioners on 10.10.1990 vide



registered Document No.1987/1990. Therefore, it cannot be said that those two documents pertain to S.F.Nos.434/1 and 434/2, are forged one.

11. In response to the submission made by the learned counsel for the petitioners, the learned counsel for the second respondent would contend that when at the time the above referred documents were executed, the first petitioner is a minor and therefore, it cannot be said that the said documents are legally valid one.

12. Considering the rival submissions made on either side, to resolve the issue raised in these petitions, it is necessary to see whether the second respondent herein is a party in Document No.1892/1990 dated 21.09.1990 through which, Survey No.434/1 was sold to one Sara Habiba Wahaira and also to find out whether the second respondent is a party to the document (i.e.) the Power of Attorney dated 21.09.1990 vide Document No.124/1990.

13. First of all, on going through the copy of the Power Deed dated 21.09.1990, the same was executed by 7 persons in favour of the first petitioner. Among 7 persons, the name of the second respondent was mentioned as 6th person. Further, the Sale Deed dated 21.09.1990 also, the second respondent herein was signed as a party.

14. In the said circumstances, the contention of the second respondent is that when at the time of execution of those documents, the second respondent is a minor. In order to prove the same, he had produced a copy of the Passport issued to the second respondent, in which, it was stated that the second respondent was born on 11.04.1977.

15. Now, on considering the same with the relevant records, all the records which have been challenged now by the second respondent are all executed in the year 1990. At that time, as per the entry made in the Passport, the second respondent had not attained the majority. The said circumstances create a *prima facie* case for fabrication of documents. More than that, in the counter affidavit filed by the defendants in O.S.No.109 of 2010, the second respondent is not signed as a party. Therefore, the contention raised by the second respondent is having some force. Accordingly, to find out the truthfulness of the issue involved in these matters, a detailed investigation is necessary. In otherwise, the averments found in the F.I.R. disclosed the cognizable offence.

16. At this juncture, it is relevant and useful to see the judgment of our Hon'ble Apex Court in the case of **SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE OF MAHARASHTRA & ORS.** in **Criminal Appeal No. 255 of 2019**, wherein it was held as follows;



"5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are *Sonu Gupta v. Deepak Gupta and Ors.* 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not."

17. Further, in the case of **AJAYKUMAR DAS vs. STATE OF JHARKHAND AND OTHERS** in **Criminal Appeal No.1735 of 2011**, our Hon'ble Apex Court has held as follows :

"Ration Decidendi : Genuineness of the allegations / charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings."

18. Applying the principles set out in the above referred judgment, herein also, the allegations levelled by the second respondent is so serious one and therefore, to find out the truthfulness of the allegations, trial is necessary.

19. Further, the judgment of our Hon'ble Apex Court in the case of **CENTRAL BUREAU OF INVESTIGATION vs. A.RAVISHANKAR PRASAD AND OTHERS** reported in **(2009) 2 Supreme Court Cases (Cri) 1063**, it has held as follows:

"Inherent powers of High Court under Section 482 Cr.P.C are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. These inherent powers can be exercised in the following category of cases : (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice.



Extraordinary power under Section 482 of Cr.P.C should be exercised sparingly and with great care and caution."

20. Therefore, applying the ratio laid down in the above referred judgments is made clear that the factual aspects which relates to the petition mentioned allegations have to be decided only by the trial Court. Herein also, on bare reading of the disputed documents disclose the fact that while at the time of executing the disputed documents, the second respondent has also joined along with her family members and executed the Sale Deed, in the said circumstances, it is necessary to see when at the time of executing the document whether the second respondent is a minor as alleged by the second respondent.

21. Accordingly, in the light of the discussions as stated supra, I am of the view that Crl.O.P.(MD)No. 5569 of 2020 filed by the petitioners is devoid of merits and therefore, this petition is liable to be dismissed.

22. In the result, Crl.O.P.(MD)No. 5569 of 2020 is dismissed. In respect to Crl.O.P.(MD)No.6221 of 2020, since the dispute having by the petitioner is long pending one, the first respondent is directed to complete the investigation in Crime No.11 of 2020 and file a Final Report as early as possible preferably within a period of four months from the date of receipt of a copy of this order. Accordingly, Crl.O.P.(MD)No.6221 of 2020 is disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Sri

To

- 1.The Superintendent of Police,
Ramanathapuram District, Ramanathapuram.
2. The Inspector of Police,
District Crime Branch,Ramanathapuram.
- 3.The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pre-delivery Common Order in
Crl.O.P.(MD)Nos.5569 and 6221 of 2020 and
Crl.M.P.(MD)Nos.3072 and 3383 of 2020

19.11.2020

SV2 (CO)

KB (03.12.2020) 6P 4C

<https://hcservices.ecourts.gov.in/hcservices/>